

**CALIFORNIA COASTAL COMMISSION**

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**W19c**

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Staff: D.Carl  
Staff report: 12/18/2002  
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Hearing item number: W19c

**APPEAL STAFF REPORT - SUBSTANTIAL ISSUE DETERMINATION**

**Appeal number** .....A-3-SCO-02-092, Webb SFD/Coastview Road improvements  
**Applicant**.....Margaret Webb Trust  
**Appellants**.....Commissioners Sara Wan and Pedro Nava  
**Local government**.....Santa Cruz County  
**Local decision** .....Approved with Conditions (October 4, 2002)  
**Project location**.....Coastview Drive off of East Cliff Drive adjacent to Corcoran Lagoon in the unincorporated Live Oak region of Santa Cruz County.  
**Project description** .....Construct one single family dwelling, define two additional single family dwelling development envelopes, expand Coastview Drive toward Corcoran Lagoon, and install additional drainage outlet into the Lagoon.  
**File documents**.....Santa Cruz County Certified Local Coastal Program (LCP); Santa Cruz County CDP Application File 01-0090; Monterey Bay ReCAP.  
**Staff recommendation** ...**Substantial Issue Exists**

**Summary of staff recommendation:** Santa Cruz County approved a proposal to construct a single family dwelling, to define two additional single family dwelling development envelopes, and to expand Coastview Drive immediately adjacent to Corcoran Lagoon in the unincorporated Live Oak area of Santa Cruz County. Corcoran Lagoon, and its 100 foot buffer, are designated as environmentally sensitive habitat areas (ESHAs) as that term is understood in a Coastal Act context. The approved project is located on a LCP-designated Coastal Priority Site. The preferred use of this site is public parking. Other LCP requirements include maximizing public access and protecting the wetland and habitat resources of Corcoran Lagoon. The approved project did not include the LCP-required Coastal Priority Site master plan, and did not otherwise address through public access and/or parking as directed by the LCP for this site. Likewise, it is not clear that the approved expansion of the road into the buffer area around Corcoran Lagoon is necessary, or that such incursion is consistent with the LCP's wetland and habitat policies, nor does the approved project include adequate protective measures to protect Corcoran Lagoon, particularly as it relates to the Coastal Priority Site requirements that apply here. The approved project appears to exceed the maximum amount of mass allowed within the subject residential zone district. These issues warrant a further analysis and review by the Coastal Commission of the proposed project.

**California Coastal Commission**

January 2003 Meeting in Los Angeles

Staff: D.Carl Approved by:

A-3-SCO-02-092 Coastview Drive Webb SFD stf rpt 1.8.2003.doc

Staff recommends that the Commission find that a substantial issue exists with respect to this project's conformance with the certified Santa Cruz County Local Coastal Program (LCP) and take jurisdiction over the coastal development permit for the project. Staff further recommends that the Commission continue the de novo hearing of the coastal development permit to allow adequate time for the Applicant to develop the LCP-required proof of ownership information and biotic analyses, for staff to further research the site's ownership characteristics and its public access use history, and for staff to work with the project applicant on potential project design modifications to meet the requirements of the certified LCP. Staff will subsequently prepare a recommendation for a de novo hearing of the project at a future Coastal Commission meeting.

## Report Contents

	page
1. Appeal of Santa Cruz County Decision .....	3
A. Santa Cruz County Action .....	3
B. Appeal Procedures .....	3
C. Appellants' Contentions .....	4
2. Procedural History (Post-County Action) .....	4
3. Staff Recommendation on Substantial Issue .....	4
Recommended Findings and Declarations .....	5
4. Project Description .....	5
A. Project Location .....	5
B. County Approved Project .....	7
5. Substantial Issue Findings .....	9
A. Applicable Policies .....	9
B. Analysis of Consistency with Applicable Policies .....	11
C. Substantial Issue Conclusion .....	21
6. Exhibits	
Exhibit A: Location Maps and Photos	
Exhibit B: County-Approved Site Plans and Elevations	
Exhibit C: Illustrative County-Approved Site Plans and Elevations	
Exhibit D: Adopted Santa Cruz County Staff Report, Findings and Conditions	
Exhibit E: Appeal of Commissioners Sara Wan and Pedro Nava	
Exhibit F: Applicant's Appeal Response	
Exhibit G: Applicable LCP and Coastal Act Policies	



# 1. Appeal of Santa Cruz County Decision

## A. Santa Cruz County Action

On October 4, 2002, the Santa Cruz County Zoning Administrator approved the proposed project subject to multiple conditions (see exhibit C for the County's staff report, findings and conditions on the project). The Zoning Administrator's approval was not appealed locally (i.e., to the Planning Commission and/or the Board of Supervisors). Notice of the Zoning Administrator's action on the coastal development permit (CDP) was received in the Commission's Central Coast District Office on October 28, 2002. The Commission's ten-working day appeal period for this action began on October 29, 2002 and concluded at 5pm on November 12, 2002. One valid appeal (see below) was received during the appeal period.

## B. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because: it is within 300 feet of the beach (opposite East Cliff Drive); it is within 300 feet of the mean high tide line of Corcoran Lagoon (and also within 100 feet of Corcoran Lagoon); and road expansion is not a principal permitted use within the Parks, Recreation, and Open Space (PR) zone district applicable to the Lagoon side of Coastview Drive.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the nearest through public road (East Cliff Drive) and the shoreline of a waterbody (i.e., Corcoran Lagoon) and thus, this additional finding would need to be made in a de novo review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the



Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

### C. Appellants' Contentions

The two Commissioner Appellants contend that the County-approved project raises substantial issues with respect to the project's conformance with core LCP and Coastal Act policies, concluding as follows:

*In sum, the proposed project is located on a site designated for public access by the LCP, directly adjacent to a significant habitat area, and within a significant public viewshed. It appears that the approved project does not include adequate measures to protect Corcoran Lagoon, public access and parking, and the public viewshed. As such, the proposed project's conformance with LCP and Coastal Act policies is questionable. These issues warrant a further analysis and review by the Coastal Commission of the proposed project.*

Please see exhibit E for the Commissioner Appellants' complete appeal document.

## 2. Procedural History (Post-County Action)

On December 12, 2002, the Commission opened and continued the substantial issue hearing on the appeal because Commission staff had not received the administrative record on the project from the County in time to prepare a staff report with a full analysis and recommendation for the Commission's December 2002 meeting. The County's administrative record on the application was subsequently received in the Commission's Central Coast District Office on December 5, 2002 (i.e., the week before the Commission's December meeting).

## 3. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.

**Motion.** *I move that the Commission determine that Appeal Number A-3-SCO-02-092 raises **no** substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act.*

**Staff Recommendation of Substantial Issue.** *Staff recommends a **no** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the*



*majority of the appointed Commissioners present.*

***Resolution To Find Substantial Issue.*** *The Commission hereby finds that Appeal Number A-3-SCO-02-092 presents a substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program and the access and recreation policies of Chapter 3 of the Coastal Act.*

## Recommended Findings and Declarations

The Commission finds and declares as follows:

### 4. Project Description

#### A. Project Location

The proposed project is located immediately inland of East Cliff Drive and the beach at Corcoran Lagoon in the unincorporated Live Oak area of Santa Cruz County. See exhibit A for illustrative project location information.

#### Santa Cruz County Regional Setting

Santa Cruz County is located on California's central coast and is bordered to the north and south by San Mateo and Monterey Counties. The County's shoreline includes the northern half of the Monterey Bay and the rugged north coast extending to San Mateo County along the Pacific Ocean. The County includes a wealth of natural resource systems within the coastal zone ranging from mountains and forests to beaches and lagoons and the Monterey Bay itself. The Bay has long been a focal point for area residents and visitors alike providing opportunities for surfers, fishermen, divers, marine researchers, kayakers, and boaters, among others. The unique grandeur of the region and its national significance was formally recognized in 1992 when the area offshore of the County became part of the Monterey Bay National Marine Sanctuary – the largest of the 12 such federally protected marine sanctuaries in the nation.

Santa Cruz County's rugged mountain and coastal setting, its generally mild climate, and its well-honed cultural identity combine to make the area a desirable place to both live and visit. As a result, Santa Cruz County has seen extensive development and regional growth over the years since the California Coastal Management Program has been in place. In fact, Santa Cruz County's population has more than doubled since 1970 alone with current census estimates indicating that the County is currently home to over one-quarter of a million persons.<sup>1</sup> This level of growth not only increases the regional need for housing, jobs, roads, urban services, infrastructure, and community services, but also the need for parks and

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<sup>1</sup> Census data from 1970 shows Santa Cruz County with 123,790 persons; California Department of Finance estimates for the 2000 census indicate that over 255,000 persons reside in Santa Cruz County.



recreational areas. For coastal counties such as Santa Cruz where the vast majority of residents live within a half-hour of the coast, and many closer than that, coastal recreational resources are a critical element in helping to meet these needs. Furthermore, with coastal parks and beaches themselves attracting visitors into the region, an even greater pressure is felt at coastal recreational systems such as that found in Live Oak. With Santa Cruz County beaches providing arguably the warmest and most accessible ocean waters in all of Northern California, and with the vast population centers of the San Francisco Bay area and the Silicon Valley nearby, this type of resource pressure is particularly evident in coastal Live Oak.

See exhibit A for project location information.

#### Live Oak Beach Area

Live Oak represents the unincorporated segment of Santa Cruz County located between the City of Santa Cruz (upcoast) and the City of Capitola (downcoast). Live Oak is part of a larger area including the two Cities that is home to some of the best recreational beaches in the Monterey Bay area. Not only are north Monterey Bay weather patterns more conducive to beach recreation than the rest of the Monterey Bay area, but north bay beaches are generally the first beaches accessed by visitors coming from the north of Santa Cruz. With Highway 17 providing the primary access point from the north (including San Francisco and the Silicon Valley) into the Monterey Bay area, Santa Cruz, Live Oak, and Capitola are the first coastal areas that visitors encounter upon traversing the Santa Cruz Mountains. As such, the Live Oak beach area is an important coastal access asset for not only Santa Cruz County, but also the entire central and northern California region.

The Live Oak coastal area is well known for excellent public access opportunities for beach area residents, other Live Oak residents, other Santa Cruz County residents, and visitors to the area. Walking, biking, skating, viewing, surfing, fishing, sunbathing, and more are all among the range of recreational activities possible along the Live Oak shoreline. In addition, Live Oak also provides a number of different coastal environments including sandy beaches, rocky tidal areas, blufftop terraces, and coastal lagoons. These varied coastal characteristics make the Live Oak shoreline unique in that a relatively small area can provide different recreational users a diverse range of alternatives for enjoying the coast. By not being limited to one large, long beach, or solely an extended stretch of rocky shoreline, the Live Oak shoreline accommodates recreational users in a manner that is typical of a much larger access system.

Primarily residential with some concentrated commercial and industrial areas, Live Oak is a substantially urbanized area with few major undeveloped parcels remaining. Development pressure has been disproportionately intense for this section of Santa Cruz County. Because Live Oak is projected to absorb the majority of the unincorporated growth in Santa Cruz County, development pressure will likely continue to tax Live Oak's public infrastructure (e.g., streets, parks, beaches, etc.).<sup>2</sup> Given that the

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<sup>2</sup> The LCP identifies Live Oak at buildout with a population of approximately 29,850 persons; based on the County's recreational formulas, this corresponds to a park acreage of 150-180 acres. Though Live Oak accounts for less than 1% of Santa Cruz County's total acreage, this projected park acreage represents nearly 20% of the County's total projected park acreage.



beaches are the largest public facility in Live Oak, this pressure will be particularly evident in the beach area.

#### Proposed Development Site

The proposed project is located immediately adjacent to Corcoran Lagoon on the inland side of East Cliff Drive. East Cliff Drive goes over the Lagoon on a bridge and thus the Lagoon extends from inland Portola Drive under East Cliff and onto the beach, known locally as Santa Maria Cliffs Beach or Corcoran Lagoon Beach. This broad beach extends from a narrow tidal shelf area adjacent to Sunny Cove (upcoast) through to a promontory at 23<sup>rd</sup> Avenue that effectively contains the Lagoon proper most of the year. Contrasting this wide sandy beach area at the Corcoran Lagoon inlet area, the beach setting changes quite drastically at this 23<sup>rd</sup> Avenue promontory and becomes extremely narrow all the way down to the westernmost outcroppings of rock at Soquel (aka Pleasure) Point (downcoast). This narrow portion of the beach is defined on its inland edge by rip-rap protecting residential structures along the blufftop and is most often referred to as 26<sup>th</sup> Avenue or Moran Lake Beach.

Coastview Drive, also known as 22<sup>nd</sup> Avenue, extends along the western side of the Lagoon from East Cliff Drive to inland Portola Drive. Coastview has a gate on its East Cliff Drive entrance, and a wood fence with a pedestrian pass through at its Portola Drive end; a myriad of signs discouraging and/or prohibiting access and parking are posted at each end.<sup>3</sup> The first 100 yards or so of Coastview Drive extending from East Cliff Drive inland is paved at a width of approximately 16 feet with a curb, gutter, and short fence along the Lagoon side. The remainder of Coastview Drive is unpaved, though fairly compacted from years of automobile use. A mature row of trees, primarily eucalyptus, extends along the western edge of the Lagoon (and the eastern edge of Coastview) from East Cliff to Portola. Coastview provides access to four single family residences from East Cliff and one from Portola (inland of the fence at the Portola end).

There are three vacant residential parcels on Coastview,<sup>4</sup> located just inland of its paved reach and between existing developed SFDs on either end (APNs 028-173-05, 07, and 08). The vacant property is owned in fee-title by the Applicant and another entity,<sup>5</sup> with the Applicant alone listed as the owner of the parcel on which an SFD is proposed in this application (i.e., APN 028-173-07). The vacant property slopes gently upward away from Coastview and Corcoran Lagoon.

See exhibit A for graphics showing the subject site in relation to the various features described above.

## B. County Approved Project

The County approved project includes three general components: (1) Coastview Drive road construction;

<sup>3</sup> Commission enforcement staff has opened an enforcement case (V-3-02-047) and is investigating the permitting history for the fence, gate, and signs. As of the date of this staff report, it is not clear whether these developments were authorized by CDP.

<sup>4</sup> It is unclear if these are three legal lots of record, or one. The County's administrative file is silent on this topic.

<sup>5</sup> Santa Cruz County Assessor data indicates that APNs 028-173-05 and 08 are jointly owned by the Applicant and Francis Markey, and that APN 028-173-07 is owned by the Margaret Webb Trust.



(2) an SFD on APN 028-173-07; and (3) approval of development envelopes to facilitate future SFD construction on the vacant parcels on either side of APN 028-173-07 (i.e., APNs 028-173-05 and 08). More specifically:

- **Coastview Drive.** The existing paved extent (roughly 300 feet) of Coastview Drive would be widened from its existing roughly 16 foot width to a roughly 22 foot width by extending the paved road roughly 6 feet towards the Lagoon for those 300 feet, and then continuing the now 22 foot wide paved Coastview area (to pave the currently unpaved portion of the road) another approximately 180 feet inland; a new total of roughly 480 feet of 22 foot wide paved road.<sup>6</sup> The existing catch basin draining road runoff directly to Corcoran Lagoon would be moved to the edge of the new Coastview Drive and would be outfitted with a silt and grease trap, and a new catch basin with silt and grease trap would be installed in the newly paved section of the road with a roughly 5 foot by 9 foot rock gabion energy dissipation structure constructed at the outfall immediately above the Lagoon.<sup>7</sup>
- **Residential Development.** A two story, 26 foot tall, roughly 2,800 square foot single-family home would be constructed on the middle lot of the three vacant lots on Coastview Drive (i.e., on APN 028-173-07).
- **Development Envelopes.** The County approved riparian exceptions (required to allow development within 100 feet of Corcoran Lagoon such as that proposed here) for Coastview Drive construction, for the residential development approved for APN 028-173-07, and for future residential development envelopes on each of the two adjacent vacant lots (i.e., APNs 028-173-05 and 08; separate CDPs would be required before any residential development could be pursued on these other lots).

The County also required the removal of 2 eucalyptus trees at the corner of Coastview Drive and East Cliff Drive, although these trees are not identified in the approved plans or proposed project, and required the removal of all downed timber along the edge of the Lagoon fronting the expanded East Cliff Drive.

See exhibit B for County-approved site plans, and exhibit C for illustrative depictions of the approved project in relation to the described locational features. See exhibit D for the County staff report, findings, and conditions approving the Applicant's proposed project.

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<sup>6</sup> Note that the precise amount of Coastview Drive expansion approved is unclear from the County file. The approved County staff report indicates that Coastview would extend from 12 feet to 20 feet in width, however the incorporated County findings on the riparian exception note the width going from 15 to 20 feet, and the County-approved plans show the width of the road going from 16 to 22 feet (when independently measured) and from 14.5 to 20 feet according to the plan notations. In addition, the County approval indicates that Coastview would be extended an additional 170 feet, but the approved plans show this to be 180 feet. Thus, there is some internal confusion on the exact amount of Coastview widening and extending approved, but no confusion that it would be widened towards Corcoran Lagoon and extended inland.

<sup>7</sup> The outfall and gabion structure would be located on APN 028-174-01. This parcel roughly corresponds to the Lagoon proper and is owned by an entity other than the Applicant (Santa Cruz County Assessor data indicates that APN 028-174-01 is owned in fee-title by Michael and Louis Zwerling).





## 5. Substantial Issue Findings

### A. Applicable Policies

There are a sizeable number of LCP policies that are applicable to the proposed project. Part of the reason for this is because the range of coastal resources involved (i.e., ESHA, public access and recreation, viewshed/character, etc.), and part of the reason is because of the way the certified LCP is constructed where there are a significant number of policies within each identified issue area, and then other policies in different LCP issue areas that also involve other issue areas (e.g., public access and recreation policies that also require habitat protection, and vis versa). In addition, there are a large number of general County policies applicable, a number of Live Oak specific policies, and then a correspondingly large number of policies specific to this site due in part to its priority site LUP designation. In terms of habitat resources, there are also two whole zoning chapters that include requirements applicable to this site.

Furthermore, Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water “shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3.” Because this project is located between East Cliff Drive (the first through public road) and Corcoran Lagoon, for public access and recreation issues the standard of review is not only the certified LCP but also the access and recreation policies of the Coastal Act.

For brevity’s sake in these findings, these applicable policies are shown in exhibit G. They are summarized below.

#### Priority Uses and Sites

The LCP designates both the residential property and the Coastview Drive property involved as “Coastal Priority Sites” to which special development standards and requirements apply (LCP Policy 2.23 et seq). The designated priority use for these sites is public access and parking, and specific requirements apply to maximize such public access and to maximize protection of Corcoran Lagoon. The sites are designated for acquisition (“D” combining park site overlay district), meaning that the LCP requires that the sites be evaluated for acquisition as part of any development application. The LCP requires that a master plan be prepared that is designed to achieve LCP priority site objectives as part of any approval. The LCP establishes a priority of uses within the coastal zone where recreational uses and facilities are a higher priority than residential uses, and the LCP prohibits the conversion of a higher priority use to a lower priority use (LCP Policy 2.22 et seq); in road improvement projects, priority is given to providing recreational access (LCP Policy 3.14 et seq). These LCP policies are more generally mimicked by Coastal Act policies that include requirements to maximize access, protect existing access, provide access in new development projects, and protect lands for public recreational uses and facilities over residential uses (Coastal Act policies 30210 – 30214, 30221 – 30223).



## ESHA

The LCP designates Corcoran Lagoon as both Sensitive Habitat and ESHA as that term is understood within a Coastal Act context (LUP Policy 5.1.2(i) and 5.1.3, IP Chapter 16.32). The LCP requires that development be set back a minimum of 100 feet from Corcoran as measured from its high water mark (IP Section 16.32.090(A)(11)) and designates this 100 foot area as a riparian corridor (LUP Policy 5.2.1 and IP Chapter 16.30) to which an additional 10 foot setback is required (LUP Policy 5.2.4); a total required minimum setback area of 110 feet. Riparian corridors are also designated as both Sensitive Habitat and ESHA by the LCP (LUP Policy 5.1.2(j) and 5.1.3, IP Chapter 16.32) within which development is generally prohibited (IP Section 16.30.040 and IP Chapter 16.32). Exceptions to setback requirements are only allowed under very limited circumstances, and are subject to making specific exception findings (IP Sections 16.30.060 and 16.32.100).

ESHA and Sensitive Habitat are to be preserved, restored, protected against significant disruptions, and any development authorized in or adjacent to them must maintain or enhance the habitat (LCP Objectives and Policies 5.1 et seq and 5.2 et seq, IP Chapters 16.30 and 16.32). The water quality of the Lagoon is required to be protected and improved through the use of appropriate BMPs (LCP Objectives and Policies 5.4 et seq, 5.7 et seq, and 7.23 et seq, and LCP Policies 2.23 et seq).

The LCP requires a biotic assessment, and potentially a full biotic report, for development within sensitive habitats (LCP Policy 5.1.9 and IP Section 16.32.070), and requires environmental review for all development proposed that affects riparian corridors and wetlands, and preparation of an EIR or a full biotic report for projects which may have a significant effect on these resources (LCP Policy 5.2.8 and IP Section 16.32.070).<sup>8</sup>

## Public Access and Recreation

The LCP contains a series of interwoven policies which, when taken together, reinforce and reflect the Coastal Act mandate to maximize public access and recreational opportunities, protect existing public access and encourage public access and recreational enhancements (such as public parking, trails, and other facilities) to increase enjoyment of coastal resources and to improve access within the Live Oak coastal region (LCP Chapters 3 and 7). The LCP policies also target the Live Oak coastal area for specific enhancements, such as parking (including LCP Programs 7.7a and 7.7b) and clear visitor signage (LCP Program 7.7f), and even more specifically require that the subject site is to be used to provide the maximum amount of beach parking (see Coastal Priority Site policies above and LCP Program 7.5a). Existing public access use is protected (LCP policy 7.7.10). These policies are reinforced by the Coastal Act policies cited above.

## Community and Scenic Character

The LCP identifies the Live Oak area as a special area with specific design criteria to protect its

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<sup>8</sup> The LCP defines biotic assessments as “a brief review of the biotic resources present at a project site prepared by the County biologist” (IP Chapter 16.32). Biotic reports are defined as a “complete biotic investigation conducted by an approved biologist” and including a required series of elements (IP Chapter 16.32). See exhibit G.



character (LCP 8.8 et seq). Unfortunately, the implementation portion of this special design criteria remains incomplete and the general coastal zone (IP Section 13.20.130(b)(1) and residential site design standards (IP Section 13.10.323) are used to ensure compatibility and appropriate scale of development. Public viewsheds are protected from disruption (LCP Objectives and Policies 5.10 et seq, LCP Policy 7.7.1, aforementioned compatibility policies). Because visual access to and along the coast is also a form of public access, Coastal Act visual access policies also apply (Coastal Act Sections 30210, 30211, 30251, and 30240(b)).

#### Procedural

The LCP requires that applicants for coastal development permits supply evidence that they are the owner of the land on which development is proposed, or that they have the written permission of the owner to pursue the project (IP Section 18.10.210(b)).

## B. Analysis of Consistency with Applicable Policies

The Commissioner Appellants generally contend that the approved project has not adequately addressed nor accounted for impacts to Corcoran Lagoon habitat, public access, and viewshed resources consistent with the LCP and Coastal Act policies that apply to this project site; see exhibit E for the complete appeal document. The Applicant has submitted a response to the Commissioner appeal (see exhibit F).

As detailed below, the appeal issues raise a substantial issue with respect to the project's conformance with the Santa Cruz County LCP. The following substantial issues are raised:

#### Property Ownership

Part of the approved project takes place on the Coastview Drive parcel (APN 028-174-02; expansion of the roadway, some drainage outlet work, removal of vegetation), another on the vacant residential property fronting Coastview Drive (APNs 028-173-05, 07 and 08; one SFD on lot 07 and development envelopes for the surrounding vacant lots), and on the Corcoran Lagoon property (APN 028-174-01; drainage outlet and gabion rock device). According to Santa Cruz County Assessor's data,<sup>9</sup> these properties have the following fee-title ownership:

- Coastview Drive (APN 028-174-02) owned in fee-title by Michael and Louis Zwerling.
- Vacant property on which the SFD was approved (APN 028-173-07) owned in fee-title by the Margaret Webb Trust.
- Vacant property on which the riparian exceptions were approved (APNs 028-173-05 and 08) owned in fee-title by Margaret Webb and Francis Markey.
- Corcoran Lagoon (APN 028-174-01) owned in fee-title by Michael and Louis Zwerling.

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<sup>9</sup> December 2002 data.



The County's file indicates that Margaret Webb Trust is the Applicant. However, according to the assessor data, the Margaret Webb Trust owns only APN 028-173-07. The other two vacant residential properties are owned by Margaret Webb (not the trust) and Francis Markey, and the Coastview Drive and Corcoran Lagoon parcels are owned in fee-title by Michael and Louis Zwerling.

A case might be made that Applicant, Margaret Webb Trust, has an ownership interest in the other 2 vacant residential properties, but there is no evidence in the County file indicating how the Trust differs from the person its named after, there is no evidence in the file as to the ownership interest of the other listed owner (Francis Markey) and whether (s)he has consented to the application. Accordingly, an LCP conformance question is raised.

As to Coastview Drive and Corcoran Lagoon, there is no evidence in the file indicating that the fee-title owner gave the Applicant permission to make an application for development on the land. Accordingly, an LCP conformance question is raised.

The County file includes a 1969 Superior Court judgment that County staff indicates<sup>10</sup> gives the applicant a legal right to access over the Coastview Drive parcel to the vacant residential parcel. However, this judgment does not include the corresponding maps to be able to confirm the metes and bounds calls being made. In addition, if such an easement right could be verified, it is not clear that such an easement right of access across a parcel gives the easement holder the right to pursue permits for development on the parcel. Accordingly, an LCP conformance question is raised.

One purpose of verifying that applicants own property on which development is proposed is that an applicant who is not the underlying property owner cannot bind the underlying property owner to the terms and conditions of the permit. This represents a fundamental principal of development applications. Its akin to applying to applying to construct a granny unit in your neighbor's backyard without their consent. For example, in the subject case, some of the issues involve perfecting public access and recreation use of Coastview Drive as directed by the LCP. If the owner of Coastview Drive is not the applicant, and if the owner of Coastview Drive does not consent to the application being made and does not consent to being bound by the terms and conditions of a subsequent approval, then the approval is not effective.

The LCP requires proof of applicant ownership, and the approved project does not include same. Accordingly, an LCP conformance question is raised.

#### Lack of Analysis

The approved project includes road expansion, drainage outlets, tree removal, vegetation clearance, and residential development within the designated riparian corridor defined as ESHA by the LCP. The approved project did not include the LCP-required biotic assessment, and did not include a biotic report. The approved project was exempted from the LCP-required CEQA review. Because of these omissions,

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<sup>10</sup> Email from Santa Cruz County Planning Department and County Counsel's Office (December 9, 2002 and December 11, 2002).



detailed habitat information with which to make informed coastal permit decisions is missing.<sup>11</sup> Accordingly, an LCP conformance question is raised.

#### Lack of Master Plan

The LCP-required master plan for this site was not a part of the approved project, and the LCP requirements of the master plan for public access, recreation, and habitat protection were not otherwise secured. Accordingly, an LCP conformance question is raised.

#### Wetland Setback

As detailed above, the LCP requires a 110 foot setback from the high water mark of the Lagoon for development.<sup>12</sup> The approved project allows for a drainage outlet and gabion device in the Lagoon, log removal at the Lagoon's edge, road development (Coastview) within roughly 35 feet of the Lagoon, tree removal within roughly 50 feet of the Lagoon,<sup>13</sup> a paved residential driveway within roughly 55 feet of the Lagoon, a 2-story 2,800 square foot residence within 100 feet of the Lagoon, a development envelope on APN 028-173-05 translating into a driveway within about 45 feet of the Lagoon and a residence within about 75 feet of the Lagoon, and a development envelope on APN 028-173-08 translating into a driveway within about 65 feet of the Lagoon and a residence within about 90 feet of the Lagoon. Each of these setback distances do not meet the minimum buffer distance required by the LCP.

The County approved a riparian exception to allow development within the required buffer for these cases (see pages 10-11 and 16-19 of exhibit D). There are several problems with this exception.

First, the required riparian exception findings do not provide adequate support to conclude that an exception is warranted in this case (see page 14 exhibit G for the precise text of the required findings).

- Required finding 1 (that there be a special circumstance) is based on an identified need to upgrade Coastview Drive to provide access, and indication that the rear portions of the residential lots include trees. Coastview Drive currently already provides vehicular access to the four residences present there, and this would hardly present a special circumstance in any case. The fact that there exist trees on the inland portion of the residential lots, and required setbacks in the front is also not a special circumstance, but rather an identification of the site constraints. In each case, there appears to be

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<sup>11</sup> In addition, although the project borders Corcoran Lagoon, the approved project did not include a formal delineation to identify the edge of the lagoon in this case. Rather, the County relied upon the high-water mark of the lagoon (as identified by the Applicant) as the edge of the wetland for setback purposes. Given that the LCP's wetland setback is measured from the high water mark of a wetland (IP Section 16.32.090(A)(11)) and not necessarily its overall extent, such lack of a formal delineation does not appear to be a substantial issue of itself here, but this omission contributes to the overall substantial issue here; particularly since the applicant's high-water mark assessment does not appear to have been verified otherwise.

<sup>12</sup> Where setbacks from the Lagoon are discussed in these findings, the setback is understood to be measured from the Applicant-identified high-water mark of the Lagoon, and not from a more precisely delineated edge of Lagoon. Similarly, where identified here, the edge of the Lagoon is taken to be the same high-water mark.

<sup>13</sup> As previously indicated, the County required the removal of 2 eucalyptus trees at the corner of Coastview Drive and East Cliff Drive. Since the trees identified for removal are not identified in the approved plans, it is estimated that the trees at this corner are roughly 50 feet from the Lagoon's edge.



adequate space with which to develop reasonably sized residences that respect the site constraints. There does not appear to be a special circumstance in this case.

- Required finding 2 (that the exception is necessary for the proper design and function of some permitted or existing use of property) is based on the residential zoning of the residential lots. However, no analysis is presented that would indicate that the exception is necessary to allow residential use. Moreover, the finding is focused on the residential lots, and does not reference the Coastview Drive or Corcoran Lagoon properties where development is also proposed. It is not clear that the exception is “necessary” as that term is understood in this required finding’s context.
- Required finding number 3 (that the exception will not be detrimental to the public welfare or injurious to other property), is based on an assertion that, if completed per project plans, the finding can be made. However, there is no biotic assessment/report that analyzes impacts and alternatives, and on which such a finding might be based (since the required reports were not done). Absent this, it would appear that removing riparian corridor for private residential paved road improvements, directing runoff from these roads and residential development into the Lagoon, and further hemming in Corcoran Lagoon resources would be detrimental and injurious to the Lagoon resource. Moreover, log removal and unspecified tree removal is required, but there is no identification of impacts associated with these project components on Lagoon habitats. It is not clear that required finding number 3 can be made in this case.
- Required finding number 4 (that the exception will not reduce or adversely impact the riparian corridor and there is no less environmentally damaging feasible alternative) is based on mitigating project impacts through erosion control and installing two silt and grease traps. However, the project would reduce the designated riparian corridor (by expanding the road), and it is not clear whether there are less damaging alternatives since there is no analysis of same as required (see report requirements above). The finding is based on mitigating, rather than avoiding impacts as the LCP directs. Even if one were to assert that mitigation could satisfy this finding, the requirement for erosion control in construction is a standard requirement of development (to control the amount of impact), and hardly compensatory for mitigation. As to the silt and grease traps, their usefulness in protecting receiving waterbodies from the effects of urban runoff pollutants has been questionable in the Commission’s experience, and likewise of limited usefulness in a mitigation role. It is not clear that required finding number 4 can be made in this case.
- Required finding number 5 (that the exception is consistent with the objectives of the LCP) is not based on any identified facts or analysis, but rather is simply restated. On the contrary, it is not clear that the project is in accordance of the policies of the LCP inasmuch as it further reduces the buffer area to the Lagoon, introduces additional impervious surfacing and urban runoff into the Lagoon, does not protect public access along Coastview, among other things (see other substantial issue findings). It is not clear that required finding number 5 can be made in this case.

Accordingly, an LCP conformance question is raised.



Second, the County findings apply only to the exception provisions of LCP Chapter 16.30, and specifically Section 16.30.060 (see exhibit G). LCP Section 16.30.030 defines the area within 100 feet of the high-water mark of the Lagoon as a riparian corridor, and LCP Section 16.30.040(a) prohibits development in the defined riparian corridor without a riparian exception per LCP Section 16.30.060; these are the findings made by the County. However, separate from the LCP Chapter 16.30 requirement, LCP Chapter 16.32.090(c)(A)(11) requires a 100 foot minimum setback from the Lagoon's high-water mark, where this buffer distance is required to be maximized.<sup>14</sup> Exceptions to the Chapter 16.32 minimum 100 foot setback can only be authorized with an exception per Section 16.32.100 that identifies an additional set of exception findings that are required to be made in this case. The LCP-required exception findings per 16.32 were not made. Accordingly, an LCP conformance question is raised.

Third, similar to the Chapter 16.30 findings, it is not clear that the Chapter 16.32 exception findings can be made (see exhibit G, pages 26-27). In particular, it is not clear that this project has minimized disturbance as required by 16.32.100(a)(1). Moreover, since this is not a habitat restoration project, and no habitat restoration has been proposed or required, the Section 16.32.100(a)(2)(i) finding cannot be made. Since the approved project did not include environmental review, a biotic assessment, or a biotic report, and lacking an otherwise thorough analysis that could act as their functional equivalent, the Section 16.32.100(a)(2)(ii) finding also cannot be made. Thus, it is not clear that required Chapter 16.32 exception findings can be made in this case. Accordingly, an LCP conformance question is raised.

There doesn't appear to be a provision in the County LCP that allows for exception findings to be made ahead of the time when the development itself (i.e. the SFDs) is actually proposed. As such, the development envelopes approved in this case may be inappropriate until it is known what development is proposed on these lots. Accordingly, an LCP conformance question is raised.

It appears that a reduced road project, one with better runoff BMPs, and one that addressed coastal priority site and other LCP and Coastal Act policies requiring public access and recreational use, could be feasible in this case. The impacts of such a road project on the habitat are, however, unclear based on the administrative file for the application. It is not clear that the current project can be found consistent with the riparian and wetland policies of the LCP as approved and based on the information developed to date. Accordingly, an LCP conformance question is raised.

#### Lagoon Water Quality

The LCP dictates that impervious surfaces be minimized, pre-development runoff rates be maintained, and that everything possible is done to protect the water quality of Corcoran Lagoon.

Additional impervious surfacing and increased runoff rates are expected with the proposed project. It appears that the amount of road paving could be reduced. In addition, the SFD proposed includes substantial amounts of concrete pathways and patios, in addition to the large driveway apron dominating its Lagoon frontage (see exhibits B and C). When combined with the large residential structure footprint,

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<sup>14</sup> Plus an additional 10 feet per LCP Policy 5.2.4 for a total minimum setback of 110 feet.



much of the lot is covered with impervious surfaces. It appears that the amount of impervious surface could easily be reduced, particularly as necessary to respond to site constraints (wetland setbacks, maximum density and coverage, etc.). Accordingly, an LCP conformance question is raised.

The approved project has addressed runoff concerns to a degree in that it would include two silt and grease traps. However, the Commission is wary of relying upon standard silt and grease traps to adequately protect receiving waterbodies from urban runoff pollutants. The efficacy of such units is has not always proven adequate in the Commission's experience. When the LCP dictates maximum protection, given the significant habitat of Corcoran Lagoon to which the runoff would be directed, silt and grease traps that act as sediment holding basins are not sufficient in this regard. Accordingly, an LCP conformance question is raised.

In addition, there is no evidence in the County administrative file evaluating runoff volumes expected at the new outfall locations, and whether the units proposed can handle that volume of runoff. Accordingly, an LCP conformance question is raised.

Building upon the above water quality concerns, IP Section 16.32.090(c)(A) prohibits development that would cause adverse water quality impacts that are not fully mitigated. It is not clear that water quality impacts are well identified, nor appropriately mitigated. Accordingly, an LCP conformance question is raised.

#### Other ESHA Requirements

In addition to the ESHA concerns thus far noted, and building upon them, there are other policies for which conformance is questionable.

LCP policy 5.1.6 requires that the approved development not significantly disrupt habitat values within the Lagoon and the 100 foot setback area, and that it maintain or enhance the functional capacity of these habitats. It is not clear that the proposed project will not significantly disrupt habitat values, partially because the approval lacks the required analysis, and it is not clear that the project will maintain or enhance the habitat. Rather, it appears that the project will reduce the habitat area, diminish its overall function, further hem in the habitat area with built urban environment structures (the expanded road), and introduce additional noise, lights, pets, and residential activities even closer to the Lagoon than currently existing. Accordingly, an LCP conformance question is raised.

LCP Policy 5.1.6 also requires reductions in scale, redesigns, and denial of projects that do not sufficiently mitigate significant adverse habitat impacts. As discussed, such impacts appear to be significant, and it appears that there are alternative project designs and mitigations that could mitigate remaining impacts. Accordingly, an LCP conformance question is raised.

LCP Policy 5.1.7 includes a series of requirements when development is proposed that affects sensitive habitat resources including: placing structures as far away from the habitat as feasible (not done in this case); requiring legal instruments like easements and deed restrictions to protect remaining habitat areas (not done in this case); and prohibiting landscaping with invasive or exotic species and encouraging the





use of appropriate native species (not done in this case). Accordingly, an LCP conformance question is raised.

Generally, when taken as a whole, and based on the ESHA related issues thus far identified, it is not clear that the approved project can be rectified to the overall ESHA goals and objectives of the LCP. Accordingly, an LCP conformance question is raised.

#### Through Public Access

The public has long used Coastview Drive as a through public access trail connecting from inland Portola Drive through to East Cliff Drive and the beach. In part, this is the reason for the LCP's Coastal Priority Site designation and requirements. At some point in time, and it appears since the coastal permitting requirements of Proposition 20 (the Coastal Initiative) and the Coastal Act, a gate was installed where Coastview meets East Cliff Drive, and a fence was installed near the intersection of Coastview with inland Portola Drive. In addition, a number of signs discouraging and/or prohibiting through public access and parking have been installed at both ends of Coastview. The Commission has been unable to locate CDPs authorizing the signs and the other physical barriers to access at this location.<sup>15</sup> The County's approval is silent on these issues. Accordingly, an LCP and Coastal Act conformance question is raised.

The Coastal Act and LCP require that public access be maximized, that existing access be protected, and that access be provided and enhanced at this LCP-designated Coastal Priority Site location. The County's approval does not evaluate the impact of the gates, fences, and signs on public access use along Coastview Drive, and dismisses the impacts of the approved project (which would leave in place the gate at East Cliff and modify the fence at Portola to make a 12 foot opening with lockable bollards) on public access asserting that it will not interfere with public access to the ocean. However, such a finding does not address whether the existing barriers to access were permitted, does not address the effect of leaving them in place (gate and signs) and modifying them (fence) when a widened road is developed without proactively providing for through public access, and, ultimately, does not protect existing public access as required by the LCP and the Coastal Act.

Coastview Drive provides an important through link from inland Portola Drive to the beach. This through accessway has become more important in recent years since Portola Drive was improved with curbs, gutters, landscaping, and sidewalks (providing additional inland parking and pedestrian connections), since the County acquired the former Albatross nightclub site and installed the popular Live Oak library just past the KSCO radio station on the Lagoon's edge on Portola (with the library site opening up a wealth of opportunities to provide interpretive facilities and trail access along the Lagoon's edge to the beach), and since the Sanctuary Scenic Trail (a component of the larger California Coastal Trail) currently envisions trail spurs along both Portola and East Cliff that are linked directly by Coastview Drive. Accordingly, an LCP and Coastal Act conformance question is raised.

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<sup>15</sup> Commission enforcement staff have opened an enforcement case and are currently researching these issues.



### Public Parking

The Live Oak beach area is an important recreational asset for Live Oak residents, other County residents, and visitors to the area. Parking is extremely limited in this area, predominantly provided by on-street parking that itself is further limited by significant amounts of private encroachments into the public right-of-way, inadequate definition of the public-private delineation point at the street's edge, no parking and restrictive parking signs (both privately posted and posted by the County), and a peak-season preferential permit parking program. In addition, additional recreational amenities and improvements (such as through trails and parking areas) are in high demand. Publicly available property on which to construct such improvements is lacking and rising coastal land costs limit the County's ability to purchase properties for public uses. The LCP contains multiple policies and programs detailing the need for parking enhancement in the Live Oak beach area; the Coastal Act likewise supports such goals and requires that public parking access be maximized.

In part because of the parking deficit in coastal Live Oak, and in part because of the historic use of the site for public beach parking (i.e., before gates, fences, signs etc.), the LCP designated the subject site, including both the vacant residential lots and Coastview Drive itself, as a priority location to maximize public beach parking (LCP Policy 2.23 et seq, LCP Programs 7.5a, 7.7a, and 7.7b); the LCP's master plan requirements (not met in this case) were meant to provide a vehicle for achieving these LCP objectives relevant to this site. However, the approved project does not provide for any public access parking on Coastview, does not provide for any public access parking on the vacant lots designated to provide parking, does not address the signs, gates, and fences obstructing public parking at this location, and instead allows for the road to be widened but paints its entire curb red and allows for additional signs to be placed along its full expanded reach to indicate that parking is prohibited. The County's findings regarding the need for parking at this beach area location are silent other than to say that the approval does not prejudice future development of beach parking at this site. However, the approved project maintains existing barriers to public parking, and installs new ones in the form of no parking signs and red curbs. Accordingly, an LCP and Coastal Act conformance question is raised.

### Priority of Uses

The LCP and Coastal Act maintain a use priority that places public recreational access uses and facilities above private residential use (see applicable policy citations above). In some cases, such as this one, the LCP further elaborates on this priority of use concept by designating Coastal Priority Sites where specific standards and requirements (meant to achieve the priority site objectives) are specified. The LCP designated priority for this site is for public access and recreation. The LCP also reserves road capacity for, and gives priority to road improvements that provide for, recreational access (LCP Policies 3.14.1 and 3.14.2). The approved project instead provides for a lesser priority use (residential); to the extent the existing use is considered recreation, such a conversion of use is prohibited by the LCP. The County indicates that future use of Coastview Drive for its LCP-designated priority use would not be prevented, but did not otherwise indicate why it wasn't being pursued now in this application. Accordingly, an LCP and Coastal Act conformance question is raised.



#### Acquisition Review

The LCP designates Coastview Drive and the residential properties involved as park site acquisition targets. What that means is that when development is proposed on sites so designated, the County must formally consider acquisition of the subject sites (and compensation to the fee-title owners) at that time. In this case, the County considered acquisition of the residential properties only, and not Coastview Drive, in this acquisition context. Since Coastview Drive was not so considered, an LCP and Coastal Act conformance question is raised.

In addition, when the County considered the residential properties involved here for acquisition, such acquisition was declined based on the assertion that the properties were not located adjacent to another County park site, and due to their limited size. It does not appear that the Board clearly understood that the site was adjacent (across East Cliff Drive) from the County's beach property, and that it (through Coastview) provides access from the inland public library site along the Lagoon to the beach. It also appears that the Board was informed by staff report that the underlying land was three combined parcels (i.e., the three residential parcels) totaling 5,401 square feet of land on which a single residential unit was being proposed. However, the three parcels total roughly three times that acreage, were not being combined, additional development envelopes (pre-supposing the other two sites for future single family units) were being pursued on the other two sites, and the project also included development moving into the buffer area surrounding Corcoran Lagoon. Accordingly, an LCP and Coastal Act conformance question is raised.

#### Tree and Log Removal

The approved project includes the removal of two trees at the intersection of Coastview Drive with East Cliff, but it is unclear from the approval where these trees are located. It is also unclear as to what impact such tree removal will have on Lagoon habitat, at least partially because the required biotic analyses were not done in this case. Accordingly, an LCP conformance question is raised.

The approved project also includes the removal of all downed logs along the edge of Corcoran Lagoon proper within the area that Coastview would be expanded. The approval includes no discussion of this project element, and it is unclear as to when and how these logs came to be located here, what role they play in the habitat of the Lagoon, and the effect on the habitat here of removing them from the Lagoon uplands. Accordingly, an LCP conformance question is raised.

#### Character, Scale, and Viewshed Protection

Given its location, the LCP's character and scale compatibility policies, and the LCP and Coastal Act's visual policies, come together to dictate a residential mass and scale that is responsive to the urban open space location and the project site constraints, including the required wetland setback. Without the specific design guidance identified in the LCP for Live Oak (but not yet part of the LCP), general compatibility and site design standards are applied to the subject site. In this case, the LCP's R-1-4 maximums as they apply to the residential portion of the site (excluding Coastview itself and the Lagoon) include the following:



Lot	Maximum Floor Area Ratio	Maximum Parcel Coverage	Minimum Side Setbacks
APN 028-173-05	50%	30%	5 & 8 feet
APN 028-173-07	50%	30%	5 & 8 feet
APN 028-173-08 <sup>16</sup>	50%	40%	5 & 5 feet

Such maximums must, however be understood within the site context and its location relative to the Lagoon. Countywide maximum considerations of mass and scale (such as lot coverage, and floor area ratio(FAR)) are not entitlements, but rather maximums that may need adjustment in light of resource constraints (wetland setbacks, public viewshed concerns, etc.).

In terms of the one SFD approved (for APN 028-173-07), the approved project allowed for a total gross square footage of 2,812 square feet as indicated on the approved plans. For FAR calculations, the LCP provides for a 225 square foot credit. The corrected square footage for FAR purposes is thus 2,587 square feet. The gross square footage of the lot is identified on the project plans as 5,451 square feet, although the County identifies it as 5,401 square feet in their adopted staff report.<sup>17</sup> The County LCP is confusing as regards how then to calculate the allowable FAR. LCP Policy 5.2.6 says to “exclude land within riparian corridors in the calculation of development density or net parcel size....” If the riparian corridor is excluded from FAR calculations, then the approved SFD would be well in excess of the allowed FAR for this site. If the riparian corridor is not excluded, then the approved SFD would be just within the maximum FAR allowed for this site. Accordingly, an LCP and Coastal Act conformance question is raised.

Similarly, the County LCP is confusing as regards how to calculate the allowable parcel coverage. Neither “parcel” nor “coverage” is defined by the LCP. In terms of the one SFD approved, the approved project allowed for a residential footprint of 1,633 square feet, and additional impervious surface coverage (by driveways, patios, and paths) of approximately 1,625 square feet; a total structural coverage of 3,258 square feet (roughly 60% of the site covered by structures). If one interprets parcel coverage to mean coverage of the site by structures, then the approved residential development would be well in excess of the maximum 30% parcel coverage allowed; roughly double. If one interprets parcel coverage to mean coverage of the site by the residential footprint of the SFD structure alone, then the approved residential development would be exactly at the maximum 30% parcel coverage allowed. In either case, if the riparian corridor is excluded from coverage calculations, then the approved residential development would be well in excess of the maximum 30% parcel coverage allowed. Accordingly, an LCP and Coastal Act conformance question is raised.

The LCP requires a minimum of 5 foot and 8 foot side setbacks for the SFD approved. The approved project plans show these at 5 feet and 5 feet, thus more mass than that allowed by the LCP. Accordingly,

<sup>16</sup> Note that the maximum parcel coverage and minimum side yard setbacks are different for APN 028-173-08 because its overall parcel size is less than 5,000 square feet. That said, the other residential parcels, too, might be less than 5,000 square feet if the riparian areas are discounted from the parcels size (see discussion that follows).

<sup>17</sup> Assessor parcel maps show the parcel as 5,450 square feet.



an LCP and Coastal Act conformance question is raised.

Similarly, the LCP requires a minimum of 5 foot and 8 foot side setbacks for the development envelope at APN 028-173-05. The approved project plans show these at 5 feet and 5 feet, thus more mass than that allowed by the LCP. Accordingly, an LCP and Coastal Act conformance question is raised.

The exceptions to the required wetland setbacks (as detailed above) allow for development massing closer to the Lagoon than specified for these sites by the LCP for the SFD approved and for the development envelopes approved. Accordingly, an LCP and Coastal Act conformance question is raised.

The project site is visible from the beach, and from East Cliff Drive, but the approved project did not include an analysis of impacts on the beach or East Cliff Drive viewshed. Accordingly, and in tandem with the above questions of consistency, an LCP and Coastal Act conformance question is raised.

Although the County staff report indicates that no trees would be removed, the conditions of approval require removal of two eucalyptus near the corner of East Cliff Drive and Coastview Drive adjacent to the Lagoon, and the approved plans indicate that 3 trees on the vacant residential properties would be removed (in addition to another 3 trees to be relocated on the vacant residential properties). In addition to the question regarding the potential habitat impacts from the tree removal (as detailed above) the removal of the trees will reduce the overall treescape canopy within the beach and East Cliff Drive viewsheds. Again, the approved project did not include any analysis of impacts to the beach or East Cliff Drive viewshed. Accordingly, an LCP and Coastal Act conformance question is raised.

## C. Substantial Issue Conclusion

The County-approved project lacks evidence that some of the property owners consent to the application, lacks the required Coastal Priority Site master plan, and lacks the required environmental and biotic analyses. It does not protect the site for the priority uses of public access and public parking as directed by the LCP, is not consistent with the wetland setback requirements of the LCP, does not adequately protect Corcoran Lagoon resources as required by the LCP, includes approved project elements that are not clearly defined, allows for development that may be in excess of the mass and scale maximums allowed for this location, and has not addressed beach and East Cliff Drive public viewshed issues. These issues, both individually and cumulatively, warrant a further analysis and review by the Coastal Commission of the proposed project.

The Commission finds that a substantial issue exists with respect to this project's conformance with the certified Santa Cruz County Local Coastal Program and takes jurisdiction over the coastal development permit for this project. It appears that there are project modifications available that can reduce the impact of the development on the Lagoon and its urban open space environs, and that can address public access and recreation requirements for this location, consistent with the LCP. Prior to further de novo review, the Commission expects that the Applicant will provide the LCP-required proof of ownership information and biotic analyses, and will work with Commission staff to evaluate alternatives designed to address the issues identified in these substantial issue findings.

